



POLICE DEPARTMENT

September 10, 2014

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Dennis Ferber
Tax Registry No. 895430
70 Precinct
Disciplinary Case No. 2013-10137

The above-named member of the Department appeared before the Court on March 28, 2014, charged with the following:

1. Said Lieutenant Dennis Ferber, on or about February 4, 2012, at approximately 2215 hours, while assigned to the 70 Precinct and on duty, in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department in that he entered said apartment without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

The Civilian Complaint Review Board (CCRB) was represented by Vanessa McEvoy and Remi Simoes, Esqs. Respondent was represented by James Moschella, Esq., Karasyk & Moschella LLP.

Respondent pleaded Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe CCRB's Case

The CCRB called Claudette Jerome as a witness.

Claudette Jerome

Claudette was 48 years old and worked as a teacher's assistant for the Department of Education. Although Claudette was of Haitian ethnicity and spoke with a West Indian accent, she used English at her job.

Claudette lived at [REDACTED] in Brooklyn, with [REDACTED] Person A, Person B, Person C and Person D. Person A was [REDACTED] It was a three-bedroom apartment. The front door opened into the living room. The unit was one floor up from the lobby and visitors had to be buzzed in. The buzzer had video capability as well.

On February 4, 2012, at approximately 2150 hours, Claudette was at home with Person B. She was putting away laundry when she heard her buzzer. She looked on the screen but did not recognize who was ringing. She asked and the individual (Respondent) said, "I'm looking for Person A." Person A was over the age of 18 at the time.

Claudette answered that Person A was not home. Respondent said that he knew Person A was not home because "he got Person A in the precinct." Claudette asked him, "[H]ow could I help you." Respondent said, "I want to get in." Claudette told him no. "You wanted Person A and Person A is not here. I don't know what you want," so she did not buzz him in.

When asked how the one to three men downstairs were dressed, Claudette answered, "They were civilians." That was why she thought they were friends of Person A. "But they weren't

Person A's friends, because he did say he had Person A at the precinct. So assume he wasn't [Person A's] friend." She did not let them in, even though the buzzer was rung several times.

Two to three minutes later, the men were knocking on her door. Claudette looked in the peephole and saw that they were the same people from downstairs. Claudette again refused to let them in but "[h]e kept going at it." She "assumed" but did not "know" that they were police officers because they had said they had Person A at the precinct. They were not in uniform and she did not see shields. She continued putting away the laundry, moving from the living room to her bedroom.

Claudette admitted that at some point she pretended to call 911. This was "so if you are police officers of course you would think they would come and then you would leave."

Claudette testified that she heard a "click" and turned around. "[T]hat man" and two others were in her living room by the door. She asked him what he was doing there and he answered that Person A invited him. "But didn't you say you had [Person A] at the precinct?," she said. "Why aren't you with [Person A]?" That was when she saw the shields around their necks. She realized that the man had taken Person A's keys and opened her door. "He just walked inside my home."

The officers handed Claudette a form and asked her to sign her consent to search the apartment. The officer told her that Person A was selling drugs and they needed to search. Claudette testified that she told the men "if you want to search, you're welcome to do so, but I'm not going to sign any papers." She even opened Person A's locked room to let the officers look inside if they wanted to. More officers came in, for a total of five. They repeatedly importuned her but she refused. A Creole-speaking officer that was summoned to the apartment told her it

was for her own good. After about twenty minutes, Claudette told the officers to leave and they left. Claudette testified that she did not let the officers into her home. She repeated this to the officers after the door was open. "He said he has the key and Person A invited him in. So he came in."

Claudette and her family since had moved from the house because she "just couldn't live there after that."

On cross examination, Claudette testified that Person A had keys for the building and the apartment. She conceded that Person A had several interactions with the police prior to February 4, 2012, and she had spoken to the police in the past. She would open the door, speak to them and allow them in. That was because the officers had been in uniform and she knew who they were.

When the police rang the buzzer that night, Claudette could see the men from the screen on her intercom. The person she was talking to was wearing a hoodie. She did not see any police paraphernalia or shields around their necks. The police rang the buzzer several times.

Claudette conceded that during her interview with the CCRB, she stated that she ignored the buzzing. Claudette explained at trial that she initially responded to the buzzer and told the individuals that Person A was not home. When they kept buzzing, she ignored it. Claudette stated that she did not know why she did not tell the CCRB she had a conversation with the police while they were at the front door. She said, "I was still upset about what happened. Maybe it skipped my mind."

According to Claudette, the individuals said that they were police officers when they were in front of her apartment door. She could not tell for sure because they were not wearing uniforms.

The officer in question showed Claudette his police shield when he was inside, not when he was at the door. Claudette agreed that at that time, she believed they were police officers.

Respondent's Case

Respondent testified on his own behalf. To expedite matters, the parties agreed that Respondent could present as evidence the CCRB interview of Lieutenant (then Sergeant) Joseph Redmond, who was on vacation the day of the trial.

Respondent

Respondent was the special operations lieutenant at the 70 Precinct. On February 4, 2012, the Street Narcotics Enforcement Unit (SNEU) made an arrest arising from a purchase made by a confidential informant (CI). Person A was the seller and the CI prearranged the buy with Person A. When Person A showed up, the SNEU team arrested him before any sale took place. He also was wanted on a graffiti complaint so he could be arrested for that.

Respondent was not present for Person A's arrest and was informed of it when Person A was brought back to the station house. Respondent spoke to him during the debriefing process, both to gather evidence against him but also to derive useful intelligence. Respondent needed to be present so that any search warrant would be processed properly.

Respondent testified that Person A denied taking part in a narcotics sale and denied being a drug dealer. He said, in sum and substance, "[Y]ou could even search my house." Person A

also

told Respondent that he could take his keys. Person A cautioned, however, that the officers would have to ask Ms. Jerome for permission to search. He was not paying rent to her and did not have exclusive domain over his room. Respondent did not believe that they had consent at that time to search the home.

Respondent got Person A's keys and went with Redmond, who was the anticrime sergeant, and a police officer, to the [REDACTED] apartment building. Respondent was in plain clothes but had his shield around his neck. They rang Claudette's apartment several times, but there was no answer. After about five minutes, the officers gained entry to the apartment building. Respondent could not recall whether they used a key or someone let them in.

Respondent testified that the officers knocked several times on the [REDACTED] apartment door. Finally they heard Claudette on the other side of the door. They identified themselves as the police. The woman responded that she did not call the police. When Respondent articulated that they wanted to speak to Claudette about Person A, she replied that Person A was not there. Respondent told Claudette that he knew Person A was not there because he was at the precinct, but that he wanted to speak to her. Respondent stated that it went back and forth like that. It became apparent that Claudette did not believe they were the police. She also kept insisting that Person A was not there. Respondent indicated that due to that and Claudette's accent, he believed there was some kind of language barrier.

Respondent held his shield up to the peephole and verbally identified himself as a member of the Department. Claudette told them to go away and threatened to call the police on them. Respondent continued to try and assure Claudette that he was a police officer, but he heard Claudette make a 911 call. She said that there were people at her front door pretending to be police.

Respondent honestly believed that Claudette was on the phone with 911 and was worried about the potential police response and a confrontation situation. Respondent announced that he had her keys and was going to open the door to prove he was a police officer. He unlocked the door and pushed it open two feet so that Respondent could see her and vice versa. Claudette was approximately five feet away when he opened the door. She acknowledged that he was holding Person A's keys. Claudette also acknowledged that they were police officers. Respondent realized that she was not in fact on the phone with 911. Respondent testified that had he not heard Claudette's pretend phone call to 911, he would not have entered the apartment.

Respondent asked if they could "come in" and speak to her, and Claudette told them they could. Respondent and his officers entered the apartment. The officers told Claudette that Person A was at the precinct, suspected of narcotics sales, and gave them permission to search the house for drugs. Claudette said that they could search, but Respondent cautioned her that she needed to sign the consent in writing. Claudette refused to sign it.

Respondent radioed for another anticrime unit to respond to the apartment, specifically requesting a Creole-speaking officer. Respondent wanted the officer to speak to Claudette because of the language barrier. After the officer told Respondent that Claudette would consent verbally but not in writing, Respondent gave Person A's keys to Claudette and the officers left the apartment. Respondent did not search the apartment.

Person A was arrested on the graffiti complaint. There were no charges relating to the drug buy because no transaction occurred, and Person A did not have any drugs on him when he was taken into custody.

On cross examination, Respondent could not recall if he was wearing a hoodie that day. Upon later questioning by the Court, however, Respondent stated that a hoodie or pullover would

be consistent with what he normally wore when performing anticrime duties. He probably was not wearing a raid jacket.

Respondent did not remember having Redmond go over the radio and say that the police already were there. The recording of a phone call Redmond made to the central radio dispatcher to cancel any response to Claudette's putative 911 call because the "suspects" actually were police officers was played at trial, but it did not refresh Respondent's recollection. He stated that he did not know Redmond had called the dispatcher.

Respondent did not see any drugs in plain view in the apartment. Upon questioning by the Court, Respondent stated that he left the SNEU team to process Person A's arrest and told them he would go to the apartment. He did not know if the intercom had video capability. Respondent affirmed that when he opened the door and held his shield up to identify himself to Claudette, he was not standing in the apartment.

CCRB Interview of Redmond, dated February 22, 2013 (see Respondent's Exhibit A, transcript)

Redmond stated that on February 4, 2012, he was assigned to anticrime patrol with a driver. At 2215 hours, they responded to the building in question with Respondent and another police officer to talk to a mother regarding her son's arrest. The officers knocked on the door and explained who they were and why they were there. They showed their shields through the peephole. Respondent "had keys to the apartment that were given to him." He unlocked the door and opened it "just to show who we were."

Redmond stated, "We had our shields out, explained who we were, and then she let us come in." Claudette was calm when she was speaking to Respondent inside the apartment. Although they spoke to Claudette about why they were there in English, a Creole-speaking

officer responded in order to speak to her in that language. Claudette gave verbal consent to search the apartment but did not want to sign the written consent form. The officers left because they were not going to search the apartment without written consent.

FINDINGS AND ANALYSIS

The instant case arises from the arrest of Person A. Person A was [REDACTED] and lived [REDACTED] with [REDACTED] Claudette Jerome, and [REDACTED] in Brooklyn. The 70 Precinct SNEU team believed, based on information supplied by a CI, that Person A sold drugs. Person A also was wanted with regard to a graffiti matter. The SNEU team had the CI set up a narcotics purchase with Person A. Before any sale was made, however, the officers moved in and arrested Person A.

No narcotics were found on Person A. Person A was interrogated or debriefed at the 70 Precinct station house. This partially was to seek arrest evidence and partially to gather possible intelligence from Person A. Respondent, the 70 Precinct special operations lieutenant, participated in the questioning.

Person A denied selling drugs and even offered to allow the officers to search his apartment. He warned, however, that Ms. Jerome would have to approve as it was her apartment. Person A nevertheless gave Respondent his set of keys. Respondent took Redmond, who was the anticrime sergeant, plus one of Redmond's officers, and went to the [REDACTED] home. The officers were dressed in plain clothes and did not wear raid jackets.

Claudette Jerome was at home when Respondent and the other officers arrived. The officers rang the intercom. According to Respondent, no one answered. According to Claudette, she thought that they might know Person A and were looking for him. The intercom had a video

feature. Claudette looked and saw three men dressed in regular clothing. Nothing identified them as police officers and she did not let them in.

The officers nevertheless entered the building and proceeded to the [REDACTED] door. They identified themselves but Claudette was skeptical and did not answer the door. She even pretended to call 911, audibly announcing that she needed a police response because someone was trying to get into her apartment.

Respondent and Redmond believed that Claudette really was calling 911 and were concerned that a police response could lead to a confrontation situation. Unbeknownst to Respondent, Redmond called the central radio dispatcher, advised of the circumstances, and instructed not to send any units. Respondent used Person A's keys and opened the apartment door. He testified that without crossing the threshold, he held the door open, showed his shield, and assured Claudette that they were police officers. He asserted that she then let them in. Claudette testified that she ignored them and went to another room in the house. She heard the door open and turned around to see the officers in her apartment. Although the officers asked her to sign a written consent to search the apartment, she refused. The officers left without searching the home.

It is charged that Respondent engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that he entered the [REDACTED] apartment without sufficient legal authority. Respondent's arguments were threefold: (a) he only entered to avoid a dangerous encounter with on-duty officers; (b) he did not enter the apartment when he merely opened the door and showed his shield to Claudette; and (c) Claudette then consented to the officers' entry.

Respondent validly was concerned about a confrontation situation. His response, however, was inappropriate and would not have solved the problem. Calling central, which Redmond did, was the only real way to call off a police response. Entering the [REDACTED] apartment still could have led to a confrontation situation and served only to inflame things. In fact, at trial, Claudette seemed most upset about the fact that the officers had entered her apartment after she told them to go away.

Respondent's parsing of the account of his entry only served to underscore the weakness of his argument that he did not enter without sufficient legal authority. It is unlikely that he was able to open the door with the key, hold it open, and show his shield enough that Claudette was able to confirm he was an officer without stepping into the apartment. Moreover, the Court cannot conclude that any purported consent was validly given by Claudette after the police already had opened her door without her consent. Cf. People v. Gonzalez, 39 N.Y.2d 122, 128 (1976) ("Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances").

Because the CCRB proved that Respondent entered the [REDACTED] apartment without sufficient legal authority, he is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 5, 1989. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of entering the apartment of Claudette Jerome without sufficient legal authority. He was seeking consent to search the apartment because Person A, was a suspect and possible supplier of intelligence concerning narcotics sales. Claudette refused to allow Respondent and two other officers in because she did not believe them to be the police. Thinking that a confrontation situation could occur if Claudette called 911, Respondent entered the apartment using the key Person A gave him. Claudette did not consent to this.

Although Respondent entered the apartment without authority, the evidence demonstrated that, contrary to CCRB counsel's argument but in accord with that of Respondent's counsel, Respondent acted in good faith during the encounter. He was attempting to mollify the situation before it grew out of control. In light of that fact, as well as Respondent's longtime dedicated service to the Department, the Court recommends that he be warned and admonished (reprimand pursuant to Administrative Code § 14-115 [a]). See, e.g., Case No. 79834/04, Police Comm'r's Mem. (Jan. 7, 2005) ("With consideration of the totality of circumstances during the evolving situation in this matter, in addition to acknowledging Respondent []'s good faith efforts and actions, there will be *no forfeiture* of accrued time/leave; however, Respondent [] is to receive re-instruction regarding proper entry into residence procedures.").

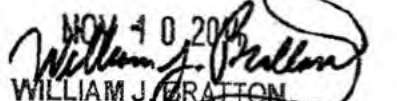
Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner Trials

APPROVED

NOV 4 0 2005

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT DENNIS FERBER
TAX REGISTRY NO. 895430
DISCIPLINARY CASE NO. 2013-10137

Respondent's last three annual evaluations were as follows: he received an overall rating of 5.0 "Extremely Competent" in 2013, 2012 and 2011. He has 33 medals for Excellent Police Duty, 21 medals for Meritorious Police Duty, and one Commendation. [REDACTED] He has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials